



## Dear Clients, Colleagues, and Friends:

With these periodic e-mail newsletters, our goal is to keep our clients, colleagues and friends apprised of recent decisions we have obtained for our clients, relevant changes in rules and regulations, and applicable case law precedent.

In this issue, you will learn about the successful seminar our firm hosted on April 7, 2011, a recent commercial decision we obtained for a client, the new NYC Civil Court hours, and new eviction scheduling procedures.

## April Seminar: A Success

On April 7, 2011, our firm successfully co-hosted an information seminar with Gotham Government Relations at the Compass Restaurant on the Upper West Side.

At the Seminar, I spoke about my perception of Housing Judges no longer

enforcing RPAPL Section 747-A, the Rent Guidelines Board's authority to make a distinction between low-rent apartments in which there has been no vacancy increase in more than 6 years, and how a landlord's refusal to accept Section 8 may constitute discrimination.

David Schwartz, the founding partner of Gotham Government Relations, spoke about the current status of legislation up in Albany. Specifically, Mr. Schwartz spoke about bills that would limit rent increases, abolish deregulation due to vacancy, and increase the income threshold to incomes of \$300,000 per year and rents of \$3,000 per month.



Over dinner and drinks, both the guests and the hosts engaged in topical discussions about the current state of the law and legislation that directly impact landlords in New York.

## Recent Commercial Decision

[Access.1 Communications Corp.-NY v. Mitchell C. Shelowitz and Shelowitz & Associates, LLC Index No. 107939/10](#)

*After Execution/Surrender, Commercial Lessor May Collect All Rent Owed Through Lease Expiration Prior to the Actual Expiration of the Lease*

In this Supreme Court case, we obtained a \$312,308.74 money judgment on behalf of our client, a commercial prime tenant, who had sublet a commercial space located at 11 Penn Plaza to a subtenant that had vacated fifteen (15) months prior to the expiration of the sublease. The money judgment represented all rent and additional rent owed through the expiration date of the sublease, and was rendered four (4) months prior to the actual expiration of the sublease.

We commenced this Supreme Court proceeding about 14 months before the lease was to expire. Justice Scarpulla granted our Motion for Summary Judgment against Defendant-Subtenant in the sum of \$312,308.74, as all rent and additional rent through the end of the sublease term, on the theory that a commercial lessor is not under a duty to mitigate damages and may recover the full rental amount through the expiration of the lease agreement. Justice Scarpulla further held that Plaintiff-Tenant was entitled to attorneys' fees against Defendant-Subtenant in both the Housing and Supreme Court proceedings. A hearing is pending before the Supreme Court to determine the amount of attorneys' fees recoverable. A copy of the Decision & Order can be found [here](#).

## New Civil Court Hours/Eviction Scheduling Procedures

Due to the newly enacted state budget, a total of \$170 million has been cut from the Judiciary's budget for the fiscal year commencing April 2011. This enormous cut to the Judiciary's budget has already impacted the court system in the form of a reduction in courthouse hours, a reduction in the number of nights small claims cases are heard, and new eviction scheduling procedures.

*NYC Civil Court Hours/Small Claims*

## In This Issue

[April Seminar: A Success](#)

[Recent Commercial Decision](#)

[New Civil Court Hours](#)

[New Eviction Scheduling Procedure](#)

[Commercial Landlord Not Liable for Injury Caused By Bedbugs](#)



## Contact Us

If you have any questions regarding this newsletter or any other real estate matter, please contact:

**Calabro & Associates**  
450 Seventh Avenue  
Suite 1504  
New York, NY 10123  
(646) 688-6095  
via [e-mail](#)  
[website](#)

Effective April 18, 2011 and until further notice, evening small claims cases will only be heard on Thursday nights throughout the five boroughs. On Mondays, Tuesdays, Wednesdays and Fridays, the NYC Civil Courts located in the five boroughs will only be open to the public until 3:45 P.M. The Clerk's office and Cashier will close at 4:00 P.M. and Courtrooms will close at 4:30 P.M. On Thursdays, the Civil Courthouses will be open to the public between until the end of the evening smalls claims session, the Landlord and Tenant Clerk's office will close at 7:00 P.M., and the Landlord and Tenant Cashier will close at 6:30 P.M..

#### *New Eviction Scheduling Procedures*

Effective April 14, 2011, all scheduled evictions taking place on the following day must be faxed to each courthouse by 3 P.M.. As such, City Marshals have adjusted the deadline times by which evictions can be added and/or cancelled for the next day. For example, Marshal Barone will no longer be able to add any no further evictions for the next day after 2:30 P.M. and requests to cancel evictions must be provided no later than 2:30 P.M. the day before the scheduled eviction.

Additionally, the Courthouse will not accept any work from the Marshal's offices after 3:45 P.M.. As such, City Marshals have adjusted the deadline by which "Serve Requests" must be made in order to be processed on the same day. For example, Marshal Barone has established 12 P.M. as the deadline for a "Serve Request" to be processed on the same day.

## **Commercial Landlord Not Liable For Injuries Caused By Bedbugs**

In a recent decision by Justice Edmead of the Supreme Court of New York County in Clark v. Beacon Capital Partners LLC, Index No. 107455/08, a commercial landlord was found not liable for the alleged injuries suffered by an employee of a commercial tenant who was bitten by bedbugs. The action was one of the first bedbug lawsuits brought by a tenant's employee against a commercial landlord and its agent.

The Plaintiff-employee alleged the landlord and other defendants were negligent and violated state regulations including new local regulation 24 RCNY Sections 151.02 which required a premises to be kept free of conditions conducive to insect and vermin congregation and proliferation. Defendant's moved for summary judgment dismissing the complaint.

Fox News, the commercial tenant in the action, had taken all necessary eradication measures. After treatments proved fruitless, it was eventually determined that the source of the bedbug infestation was a Fox News employee who shared a desk with the Plaintiff-employee and kept re-infecting the premises every time he entered the commercial premises.

In a Decision dated April 11, 2011, Justice Edmead granted Defendant's motion for summary judgment, finding that Defendants could not have taken any measures beyond the extraordinary measures already taken by the commercial tenant, and compliance with 24 RCNY Section 151.02 was impossible regarding bedbugs. Since infestation was not caused by any of the defendants, they had no duty to exterminate the space leased to Fox News. A copy of Justice Edmead's Decision can be found [here](#).

## **Our Firm**

For those of you that are new to our firm, Calabro & Associates, P.C. is a boutique real estate law firm located in midtown Manhattan specializing in landlord/tenant disputes, general real estate litigation and real estate transactions. Our firm regularly appears in Housing Court on summary non-payment and holdover proceedings, and in Civil and Supreme Courts on real estate and general litigation matters. In addition to real estate litigation, our firm is experienced in performing real estate transactions, and reviewing, negotiating and drafting residential and commercial leases. For more information on our firm, please refer to our [website](#).

**Sincerely,**

Gregory Calabro, Esq.  
Calabro & Associates, P.C.